

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INOVIS, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-459 (GMS)
)	
DISTANCE DIGITAL CO., LLC and)	
CLASSIFIED INFORMATION, INC.,)	
)	
Defendant.)	

**PLAINTIFF INOVIS' ANSWERING BRIEF IN OPPOSITION TO
CLASSIFIED INFORMATION'S MOTION TO DISMISS COUNT I OF THE
FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION,
AND COUNTS II AND III IN FAVOR OF PLAINTIFF'S FIRST-FILED ACTION
IN THE NORTHERN DISTRICT OF GEORGIA**

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I. SUMMARY OF ARGUMENT

Defendant Classified Information, Inc. (“Classified”) argues that Count I of the complaint, which seeks a declaratory judgment of noninfringement, should be dismissed for lack of subject matter jurisdiction because Classified has offered Inovis USA, Inc. (“Inovis”) a covenant not to sue. There is reason to doubt, however, that Classified owns the patent in suit -- Classified represented to Inovis before filing this motion that the patent had already been conveyed to co-defendant Distance Digital Co., LLC (“Distance Digital”), and has made contradictory representations since then. Because of Classified’s contradictory representations about its patent rights, and because the dealings between Classified and Distance Digital are suspicious, Inovis needs discovery to determine who owns the patent and whether or not Classified is authorized to enter into a covenant not to sue. Moreover, the proposed covenant does not cover Inovis’ customers. Because Classified has threatened Inovis’ customers, it is well-established that, to eliminate the controversy between Inovis and Classified, Classified must agree not to sue Classified’s customers.

In its motion, Classified also requests that Counts II and III be dismissed because similar allegations were made in a lawsuit filed by Inovis against Classified in the United States District Court for the District of Georgia (“the Georgia Suit”). That suit, however, has been dismissed, so there is no basis for dismissing Counts II or III.

II. STATEMENT OF FACTS

Classified is a competitor of Inovis and is in the business of selling e-business encryption software. (See D.I. 12 at ¶¶ 9-11; Ex. 1, Templar Software Products at <http://www.templarsoftware.com/products.asp> (“Classified Information, Inc is the developer and distributor of Templar 5, the latest, Java-based version of the industry-leading e-business encryption software, Templar.”)). This lawsuit arises out of Classified’s written campaign of

threats against Inovis' customers, falsely accusing them of infringement of U.S. Patent No. 5,812,669 ("the 669 patent") by virtue of their use of Inovis' BizManager product. (D.I. 12 at ¶¶ 18-22, 35-36 and Exhibit B). An example of one such letter accusing an Inovis customer of infringing the 669 Patent is attached to the Amended Complaint at Exhibit B. (*Id.* at Exhibit B). As alleged in the Amended Complaint, Classified has sent at least three such letters to Inovis' customers. (*Id.* at ¶ 18). As attested to in the attached Declaration of Kenneth Williams, Inovis' Chief Financial Officer and Senior Vice President, Inovis is subject to indemnification agreements with its customers and in fact indemnifies its customers for patent infringement claims against the customers attributable to the customers' use of Inovis' products. (Decl. of Kenneth Williams, Ex. 2 at ¶¶ 3, 4).

On February 20, 2007, Inovis filed a Complaint against Classified in the United States District Court for the Northern District of Georgia ("the Georgia Suit") asserting one claim under the Lanham Act and one for tortious interference with business relationships under state law. (D.I. 15 at Tab 1). Classified filed a motion to dismiss for lack of personal jurisdiction in Georgia (Ex. 3) but, before that motion was decided by the court, Inovis dismissed the lawsuit pursuant to Rule 41(a)(1). (Ex. 4).

On July 12, 2007, while the Georgia Suit was still pending, Christian Putnam, who purports to be the president of Classified, sent an email to one of Inovis' counsel in which he claimed that he had no right, title or interest in the 669 patent because he had "sold" it:

I've sold the patent (US 5,812,669) to a third party company that is well known for buying patents. I've assigned 100% of the title and have no influence of the direction they may take to sell or license the patent. Classified, myself or any affiliate is [sic] no longer able [to] license the patent.

(Ex. 5). The email, which repeatedly employed the past tense, was unequivocal that Classified no longer had any interest in the 669 patent. This position was later reiterated by Classified's

outside counsel in the Georgia Suit, when, on July 19, 2007, he forwarded to Inovis' counsel a purported "Assignment of Patent Rights" from Classified to a supposed limited liability company called "Distance Digital Co., L.L.C." (Ex. 6; D.I. 12 at Exhibit C). The Assignment of Patent Rights lists the "Assignor" as "Christian Putnam," and purports to contain a notary public's stamp. (Id.). The Assignment of Patent Rights is dated the same day as Mr. Putnam's email to Inovis' counsel—July 12, 2007. (Id.; Ex. 5). It states that it "does hereby sell, assign, transfer, and convey unto Distance Digital Co., L.L.C. . . . all right, title, and interest" in, among other things, the 669 Patent. (Ex. 6; D.I. 12 at Exhibit C). The address for Distance Digital is that of its agent for service of process in Wilmington, and no trace of the entity can be found in any public filings or in Internet searches. (Ex. 7).

On July 23, 2007, Inovis filed suit in this Court against both Classified and Distance Digital.¹ (D.I. 1). Inovis' Delaware Complaint includes one count of declaratory judgment of non-infringement, invalidity, and/or unenforceability of the 669 patent, one count of unfair competition under the Lanham Act and one count of tortious interference with business relationships. (D.I. 12).

Before either Classified or Distance Digital had answered Inovis' Delaware Complaint, on August 22, 2007, Classified's counsel sent Inovis' counsel a proposed, unsigned covenant not to sue. (D.I. 15 at Tab 3). While Mr. Putnam's July 12 email stated unequivocally that Classified no longer owned any interest in the 669 Patent, and although the purported Assignment of Patent Rights was to the same effect, now Classified had turned 180 degrees: the proposed covenant not to sue states: "WHEREAS, Classified Information Inc. [sic] . . . owns all right, title and interest in and to United States Patent No. 5,812,669 . . ." (D.I. 15 at Tabs 3, 6).

¹ Inovis filed its First Amended Complaint on August 17, 2007. (D.I. 12).

Obviously, Mr. Putnam's inconsistent representations regarding the 669 Patent cannot be taken at face value.

In response to the Amended Complaint, Classified filed the instant motion. Attached to that motion, is a letter from one Cathy Regan, whose title is not stated, but whom the letter describes as Distance Digital's "Authorized Person." (D.I. 15 at Tab 2). The letter is dated September 4, three days before Classified filed its motion and after defendants had requested two extensions to respond to the amended complaint. (*Id.*; D.I. 8, 11, 13-14). Ms. Regan's letter is written on stationery that uses as the company's address that of its Delaware agent for service of process, 2711 Centerville Rd., Suite 400 in Wilmington. (D.I. 15 at Tab 2; Ex. 7). The September 4 letter refers to something called a "Patent Purchase Agreement," but that agreement, if it ever existed, is not attached to the letter or to the moving papers of Classified. According to Ms. Regan's letter, the "Patent Purchase Agreement" is "terminated" and Distance Digital "has no rights under the Assignment of Patent Rights." (D.I. 15 at Tab 2). Classified states that Distance Digital advised Classified that it had decided to terminate the purported assignment after Inovis filed the Delaware complaint. (D.I. 15 at 3). Yet the letter from Distance Digital to Classified "officially" terminating the purported assignment was dated September 4, 2007, *after* Classified had first offered Inovis the proposed covenant not to sue. (Compare D.I. 15 at Tab 2 to Tab 3).

III. ARGUMENT

- A. **Classified's Covenant Not to Sue Did Not Divest the Court of Jurisdiction Over Count I of Inovis' Amended Complaint**
 - 1. **Plaintiff Should Be Granted Leave to Conduct Limited Discovery Relating to Subject Matter Jurisdiction**

Classified's purported president, Mr. Putnam, has made conflicting representations regarding who owns the 669 Patent and therefore who may have the authority to

execute a covenant not to sue. As noted, on July 12, 2007, Mr. Putnam sent Inovis an email stating that he had “sold the patent” and that he and Classified were “no longer able to license the patent.” (Ex. 5). Then defense counsel in the Georgia Suit sent plaintiff’s counsel a purported assignment, which contains language considered effective in conveying an interest in intellectual property. (Ex. 6; D.I. 12 at Ex. C). Yet the proposed covenant not to sue attached to Classified’s motion to dismiss claims that “Classified Information Inc. (Classified) owns all right, title and interest in and to United States Patent No. 5,812,669.” (D.I. 15 at Tabs 3, 6). At least one of these representations must be false.

Classified’s brief attempts to reconcile these puzzling events by referencing the strange September 4 letter signed by “Its Authorized Person,” but this letter raises more questions than it answers. The letter refers to a certain “Patent Purchase Agreement with an Effective Date July 11, 2007,” yet that document has never been produced. (D.I. 15 at Tab 2). Ms. Regan’s letter further states that the “Patent Purchase Agreement” is “terminated,” but it is not clear what effect, if any, such a “termination” might have on the conveyance language contained in the “Assignment of Patent Rights, i.e., “Classified . . . does hereby sell, assign, transfer, and convey unto Distance Digital . . .” Cf. *Imatec, Ltd. v. Apple Computer, Inc.*, 81 F. Supp. 2d 471, 481 (S.D.N.Y. 2000) (words of conveyance such as “I hereby assign” effectuate conveyance) (citing *FilmTec Corp. v. Allied-Signal, Inc.*, 939 F.2d 1568, 1573 (Fed. Cir. 1991) (where contract grants rights in any future inventions to assignee, “ordinarily, no further act would be required once an invention came into being” because “the transfer of title would occur by operation of law”); *Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1580-81 (Fed. Cir. 1991) (distinguishing between present assignment of expectant interest in future invention and mere promise to assign rights in future invention)). Ms. Regan’s letter also states that Distance

Digital “never received an executed original of the [Patent Purchase Agreement], an executed original of the Assignment of Patent Rights, or any Deliverables under the PPA,” but it is again not clear why those things, if true, would make false Mr. Putnam’s claim on July 12 that all “right, title and interest” to the 669 patent had already been conveyed. Given Mr. Putnam’s inconsistent representations, the curious letter from Distance Digital’s “Authorized Person” using the address of its agent for service, the timing of the letter, and the shadowy relationship between Classified and Distance Digital, the facts underlying Classified’s motion are uncertain at best. Under such circumstances, limited discovery relating to subject matter jurisdiction is appropriate. *See Adkins v. Rumsfeld*, 450 F. Supp. 2d 440, 447 (D. Del. 2006) (granting plaintiff leave to conduct limited discovery related to issues raised by defendant in motion to dismiss for lack of subject-matter jurisdiction); *Ensign-Bickford Co. v. ICI Explosives USA Inc.*, 817 F. Supp. 1018, 1021 (D. Conn. 1993) (parties permitted to conduct discovery on jurisdictional matters after defendant filed motion to dismiss for lack of subject matter jurisdiction and personal jurisdiction).

2. Even if Classified’s Proposed Covenant Not to Sue Is Legitimate, It Does not Divest the Court of Subject Matter Jurisdiction Over Count I Because It Fails to Include Inovis’ Customers

Aside from the uncertainty about who owns which interests in the 669 patent and who might have the authority to enter into a covenant not to sue, the proposed covenant not to sue does not divest the Court of subject matter jurisdiction over Count I because it expressly exempts Inovis’ customers, providing that it does “not extend to any third parties, including any

third parties acting in concert with Inovis or using products or services provided by Inovis.”² (D.I. 15 at Tab 6 at ¶ 5). Of course, this lawsuit arose out of Classified’s threats against Inovis’ customers. (D.I 12 at ¶¶ 18-22, 35-36 and Exhibit B). Where a patentee has asserted that a customer of a declaratory judgment plaintiff has infringed the patentee’s patent, a covenant not to sue does not divest the court of subject matter jurisdiction unless it expressly covers the plaintiff’s customers. *WS Packaging Group, Inc., v. Global Commerce Group*, No. 06-C-674, 2007 U.S. Dist. LEXIS 34880, at *11-12 (E.D. Wisc. May 10, 2007) (waiver of suit did not relieve court of subject matter jurisdiction where it did not apply to customers without express indemnification contracts but who, under the UCC and state law, could hold declaratory judgment plaintiff liable); *BIS Advanced Software Sys., Ltd. v. Red Bend Software, Inc.*, No. 04-11960, 2006 U.S. Dist. LEXIS 12223 (D. Mass. Mar. 22, 2006) (where patentee’s promise not to sue extended only to defendant and patentee had “throughout the litigation shown a desire to sue defendant’s customers for infringement as well,” actual case or controversy remained over defendant’s counterclaim for invalidity); *Synopsys, Inc. v. Ricoh Co.*, 343 F. Supp. 2d 883, 888-89 (N.D. Cal. 2003) (case or controversy remained over plaintiff’s declaratory judgment claims despite agreement not to sue plaintiff for infringement where patentee had previously sued plaintiff’s customers); *see also MetroPSC Commc’n, Inc. v. Leap Wireless Int’l, Inc.*, No. 3:06-CV-1399-D, 2007 U.S. Dist. LEXIS 4981, at *9-12 (N.D. Tex. Jan. 23, 2007) (covenant not to sue alone did not divest court of jurisdiction where covenant did not insulate the declaratory judgment plaintiff from suits arising out of possible infringement of the patent by an agent,

² Plaintiff’s counsel pointed out this fact to defense counsel after receipt of this motion, and defense counsel agreed to provide Inovis with a covenant that would include Inovis customers. After plaintiff’s counsel provided proposed language to defense counsel, however, defense counsel abruptly terminated the discussions, and refused to give any reason why.

dealer, customer, or indemnitee, but ultimately finding no reasonable apprehension of suit because the plaintiff had not demonstrated that the patentee had threatened plaintiff or any other entity such as plaintiff's customers); *Dow Chem. Co. v. Exxon Chem. Patents, Inc.*, No. 94-572-SLR, 1996 U.S. Dist. LEXIS 14741, at *9 (D. Del. Sept. 20, 1996) (statement of nonliability sufficient to protect plaintiff against any reasonable apprehension of suit where patentee asserted that the statement covered any party indemnified by plaintiff).

For example, in *WS Packaging Group, Inc., v. Global Commerce Group*, the court rejected the patentee's waiver of the right to sue even though the waiver expressly applied to customers who plaintiff had contracted with to indemnify from suit by the patentee because the waiver did not include plaintiff's customers without indemnity agreements. *WS Packaging Group*, 2007 U.S. Dist. LEXIS 34880, at *11-12. The patentee had bragged about threatening customers of allegedly infringing vendors or manufacturers. *Id.* at *11. The court also noted that "[b]y virtue of Wisconsin's adoption of the UCC, [plaintiff's] customer without an indemnification contract could nevertheless hold [plaintiff] liable for infringement if [the patentee] decided to bring suit against that customer." *Id.* at *11-12 (citing *Wis. Stat.* § 402.312(3)).³ The Delaware Code contains an identical provision. DEL. CODE ANN. tit. 6, § 2-312(3).⁴ In addition, Inovis is subject to indemnification agreements with its customers. (Williams Decl., Ex. 2 at ¶¶ 3, 4.)

³ "Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any 3rd person by way of infringement or the like. . . ." *Wis. Stat.* § 402.312(3).

⁴ "Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications." DEL. CODE ANN. tit. 6, § 2-312(3).

Classified's covenant not to sue specifically excludes Inovis' customers and states that it "does not extend to any third parties, including any third parties acting in concert with Inovis or using products or services provided by Inovis." (D.I. 15 at Tab 6 at ¶ 5). Moreover, Classified has specifically threatened that Inovis' customers infringe the 669 patent by using Inovis' BizManager products. (D.I. 12 at ¶¶ 18, 35 and Exhibit B). Because Classified's proposed covenant not to sue does not include Inovis' customers using Inovis' products, it does not divest this Court of its subject matter jurisdiction over Inovis' declaratory judgment claim.

Classified's cited authorities are not to the contrary. *Intellectual Property Development, Inc. v. TCI Cablevision of California, Inc.*, 248 F.3d 1333, 1341-42 (Fed. Cir. 2001) applied the pre-*MedImmune* standard in holding that there was no subject matter jurisdiction over a declaratory judgment count because "[a] suit filed against a different party, even if [plaintiff] could potentially be required to indemnify that party, is not a suit that [plaintiff] itself faces." Under *MedImmune*'s "all the circumstances" test, the issue here is no longer whether Inovis has a reasonable apprehension of suit against itself, but rather whether Classified's threats against Inovis' customers and Inovis' duty to indemnify them creates a substantial controversy. See *MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007).

Matsushita Battery Indus. Co. v. Energy Conversion Devices, Inc., No. 96-101-SLR, 1997 U.S. Dist. LEXIS 21016, 1997 WL 811563 (D. Del. Dec. 23, 1997), supports Inovis' position and undermines Classified's. In *Matsushita*, the declaratory-judgment plaintiff argued that the patentee's covenant was deficient because it did not protect parties that may have been indemnified by the plaintiff. *Matsushita*, 1997 U.S. Dist. LEXIS 21016, at *13. In response, the patentee asserted in its brief that the patentee "expressly releases any of [plaintiff's] indemnities from liability for any infringement" *Id.* at *15. The court stated that, "[t]aking [the

patentee] at its word, the covenant of nonliability releases [plaintiff], and any of its indemnitees, from any claims of infringement” *Id.* at *19. Given the release of the indemnitees, the court held it lacked subject matter jurisdiction over the action. *Id.* at *21. The clear negative implication of that holding, therefore, is that, but for such a release, there would have been subject matter jurisdiction over a declaratory judgment claim. Classified’s remaining authorities are all irrelevant, since none involves situations where the patentee threatened the declaratory judgment plaintiff’s customers and then executed a covenant not to sue that excluded those customers.⁵

**B. Classified’s Motion to Dismiss Counts II and III of Inovis’
First Amended Complaint Is Moot**

On October 5, 2007, Inovis filed a Notice of Dismissal of its action in Georgia pursuant to Federal Rule of Civil Procedure 41(a)(1). (Ex. 4). Therefore, there is no longer a

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In *Microchip Tech. Inc. v. Chamberlain Group, Inc.*, 441 F.3d 936, 942-43 (Fed. Cir. 2006), a case not cited by Classified, the Federal Circuit held that the district court lacked subject matter jurisdiction over a declaratory judgment claim where the covenant not to sue did not apply to the plaintiff’s customers. In *Microchip*, however, the court noted that the declaratory-judgment plaintiff had not “established a legal relationship between it and a customer that had a legal interest adverse to [the patentee], such as the existence of an indemnity agreement between [plaintiff] and its customer.” *Id.* at 943. Accordingly, *Microchip* teaches that where a customer is threatened with patent litigation and the vendor has agreed to indemnify that client for infringement, the pre-*MedImmune* standard of “reasonable apprehension of suit” is satisfied. See *Cognex Corp. v. VCode Holdings, Inc.*, No. 06-1040 (JNE-JJG), 2006 U.S. Dist. LEXIS 81242, at *15 (D. Minn. Sept. 13, 2006); see also *Financial Fusion, Inc. v. Ablaise, Ltd.*, No. C-06-2451 PVT, 2006 U.S. Dist. LEXIS 73574, at *8-9 (N.D. Cal. Sept. 27, 2006). Here, as noted, Inovis has both express indemnification agreements with its customers, and Delaware law provides for such a “legal relationship between it and a customer.” See DEL. CODE ANN. tit. 6, § 2-312(3) and Williams Decl., Ex. 2 at ¶¶ 3-4. In any event, *Microchip* applied the pre-*MedImmune* standard of “reasonable apprehension of suit,” which is no longer the law. See *MedImmune, Inc. v. Genentech, Inc.*, 127 S. Ct. 764, 771 (2007).

“first-filed” action in the Northern District of Georgia and Classified’s motion to dismiss counts II and III is moot.⁶

IV. CONCLUSION

For the reasons stated above, Inovis should be permitted to engage in limited discovery related to subject matter jurisdiction and Classified’s Motion to Dismiss should be denied.

⁶ Additionally, the first-filed rule does not apply when personal jurisdiction has not been established in the first forum. *See Saudi v. Acomarit Maritimes Servs., S.A.*, 245 F. Supp. 2d 662, 667 n.3 (E.D. Pa. 2003) “(The [first-filed] rule does not apply in the instant case because personal jurisdiction has not been established in the Southern District of Texas, where Plaintiff first filed his action, or in any other district.”). At the time Inovis dismissed the action in Georgia, Classified was contesting personal jurisdiction in Georgia. (See Ex. 3).

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EXHIBIT 1



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- **Server Management**—If you have clients outside the Subnet, they can specify an IP to search each time they start their application and, if a T5 server is running, login.
- **Parallel Tasking**—All T5 Transport protocols can be run in multiple instances to utilize the full resources of your machine.
- **Define XML Definitions**—Your XML, Your Way! T5 holds true to the standards of ebXML and cXML however it also allows you to utilize your own standard. Create your XML documents, tell T5 where to look for key bits of info required for transmitting it and T5 will support your schema. T5 not only meets the standards, it surpasses them.
- **User Experience Control**—Utilize the User Administration to keep internal security tight. T5 allows you to specify who can access the T5 server and what they can do.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INOVIS USA, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-459-GMS
)	
CLASSIFIED INFORMATION, INC. and)	JURY TRIAL DEMANDED
DISTANCE DIGITAL LLC,)	
)	
Defendants.)	

DECLARATION OF KENNETH WILLIAMS

I, Kenneth Williams, based on personal knowledge hereby declare:

1. I am the Chief Financial Officer and Senior Vice President of Inovis USA, Inc. ("Inovis").
2. Inovis markets and sells "BizManager," inclusive of BizLink, BizConnect, Bizmanager400, and other products (collectively "Inovis Products").
3. It is Inovis' practice to indemnify its customers for any patent infringement claim against the customer attributable to the customer's use of Inovis Products. For example, Inovis' agreement with Aspen Pet Products includes an indemnification clause.
4. Inovis has agreed to indemnify its customers against any claim for patent infringement of U.S. Patent No. 5,812,669 attributable to the customer's use of Inovis Products.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 10/4/2007

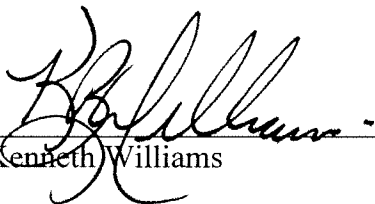

Kenneth Williams

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07-CV-0424-CAP
)	
Classified Information, Inc.,)	
)	
Defendant.)	
)	

**DEFENDANT'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION
TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendant, a corporation, filed a Motion to Dismiss for Lack of Personal Jurisdiction in this case on May 4, 2007 that was prepared and served *pro se* on May 2, 2007 [docket # 7]. Since May 3, 2007, Defendant has been represented by counsel, who has prepared a supplemental memorandum of law in support of Defendant's motion to dismiss. Local Rule 7.1 requires that memoranda of law accompany the motion to which they pertain. In light of circumstances, as demonstrated by the briefs and declarations filed in support of Defendant's Motion to Set Aside Default [docket ## 8 and 11], good cause exists for the Court to accept for filing a supplemental brief.

Wherefore, Defendant respectfully requests that the Court accept for filing “Defendant Classified Information, Inc.’s Supplemental Memorandum of Law in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction.”

Respectfully submitted this 21st day of May, 2007.

FRIEND, HUDAK & HARRIS, LLP

Steven W. Hardy

STEVEN W. HARDY
Georgia Bar No. 325910
Three Ravinia Drive
Suite 1450
Atlanta, Georgia 30346-2117
Ph.: (770) 399-9500
Fax: (770)-395-0000

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07-CV-0424-CAP
)	
Classified Information, Inc.,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing *Defendant's Motion for Leave to File Supplemental Memorandum of Law in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction*, upon James H. Cox, Esq. and Catherine Salinas, Esq. using the CM/ECF filing system

This 21st day of May, 2007.

FRIEND, HUDAK & HARRIS, LLP

Steven W. Hardy
STEVEN W. HARDY
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Suite 1450
Atlanta, Georgia 30346-2117
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Fax: (770)-395-0000

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07-CV-0424-CAP
)	
Classified Information, Inc.,)	
)	
Defendant.)	
)	

**DEFENDANT CLASSIFIED INFORMATION, INC.'S SUPPLEMENTAL
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

I. INTRODUCTION

Plaintiff Inovis, Inc. ("Inovis") has brought claims in this Court against defendant Classified Information, Inc. ("CI") based upon cease and desist letters that CI sent to customers of Inovis in other States. No basis exists for subjecting CI to the exercise of jurisdiction in this State. CI is not based in Georgia and has only limited contacts with the State. Moreover, Inovis's claims do not arise from any contacts CI has with Georgia. The complaint should be dismissed for lack of jurisdiction over the person of CI.

II. STATEMENT OF FACTS

Inovis is a Georgia corporation with its principal place of business in Georgia. Complaint ¶ 2. CI is a Delaware corporation with offices in California and Texas. Declaration of Christian Putnam in Support of Motion to Dismiss ¶¶ 4-5 (hereinafter, "Putnam Mot. to Dismiss Decl. ¶ __") Inovis markets a data exchange system called Bizmanager. Complaint ¶¶ 8-9. CI markets a product called Templar that competes with the Bizmanager system. Complaint ¶ 11.

Inovis's claims against CI are based upon "written threats" that CI sent to three customers of Inovis alleging that, by their use of the Bizmanager software, those customers infringed a patent held by CI. Complaint ¶ 14. Based upon CI having sent these letters to Inovis's customers, Inovis alleges that CI has violated Section 43 of the Lanham Act and has tortiously interfered with Inovis's business relations. Complaint ¶¶ 26-38. The Complaint contains no allegations about where these "written threats" were sent and, in particular, about whether any of these customers are located in Georgia or received the "threats" in Georgia. In fact, none of the letters was sent to an address in Georgia. Putnam Mot. to Dismiss Decl. ¶ 13.

CI does not maintain any offices or operations, manufacturing, production or distribution facilities in Georgia. CI does not own real estate or assets of any kind in Georgia. CI does not have employees or independent contractors in Georgia.

Putnam Mot. to Dismiss Decl. ¶ 8. CI has not directed advertisements or other promotional material, via print television, or any other media, at Georgia residents or locations. Putnam Mot. to Dismiss Decl. ¶ 6. No employees have visited Georgia for any business purpose in the past several years and CI has not initiated sales calls to companies located in Georgia. Putnam Mot. to Dismiss Decl. ¶ 7.

Since the beginning of 2005, CI has had one sale of \$3,000.00 to a company located in Duluth, Georgia. Other than this customer, CI has no contacts, customers or agents in Georgia. Phone calls to this customer were limited to 1-2 phones calls in 2006-2007. Other than the invoice mailed to this customer on April 27, 2005 there has not been any correspondence, mail, facsimiles or other documents between CI and any persons or companies in Georgia. Putnam Mot. to Dismiss Decl. ¶ 9. CI does not derive substantial revenues or benefits from the State of Georgia. In 2006, CI's revenues from sales to the only CI customer located in Georgia were \$3,000, only 0.625% of CI's total revenues of \$479,680 in 2006. Putnam Mot. to Dismiss Decl. ¶ 10.

III. ARGUMENT AND CITATION OF AUTHORITY

The complaint in this case should be dismissed because the Court does not have personal jurisdiction over CI. The claims in the complaint are based upon letters sent and received outside of Georgia. These facts fail to satisfy the requirements of the Georgia Long Arm Statute, as well as the requirements of due process under the constitution for the exercise of personal jurisdiction. The Court should grant CI's motion to dismiss.

A. THE LONG ARM STATUTE DOES NOT PROVIDE A BASIS FOR ASSERTING PERSONAL JURISDICTION OVER CI.

Inovis alleges that CI is subject to the personal jurisdiction of this Court under the Georgia Long Arm Statute, O.C.G.A. § 9-10-91. Complaint ¶5. Inovis, as plaintiff, has the burden of establishing personal jurisdiction. *Consolidated Dev. Corp. v. Sherrit, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000). In order to exercise personal jurisdiction over a nonresident defendant in Georgia, the Court must determine: (1) whether the Long Arm Statute authorizes the exercise of personal jurisdiction over the nonresident, and (2) whether the exercise of personal jurisdiction violates the nonresident's rights under the Fourteenth Amendment. *Sculptchair, Inc. v. Century Arts*, 94 F.3d 623, 626 (11th Cir. 1996) (applying state long arm statute to Lanham Act claims). This Court should construe the Georgia

Long Arm Statute as would the Georgia Supreme Court. *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990).

“In Georgia, [the] due process analysis is appropriate only after it is first established that the non-resident defendant committed one of the acts described in the Long-Arm Statute.” *McDonnell v. Beatty & Assocs., Inc.*, 203 Ga. App. 807, 808, 418 S.E.2d 95, 95 (1992); *Innovative Clinical Consulting Services v. First National Bank of Ames, Iowa*, 279 Ga. 672, 620 S.E.2d 352 (2005). In recent years, the federal courts in this district – citing Georgia Supreme Court case law that held that the Long Arm Statute conferred jurisdiction to the maximum extent allowed by the due process clause of the constitution -- have generally ignored the requirements of the Georgia Long Arm Statute and moved directly to the due process analysis. *E.g., Horsley v. Feldt*, 128 F. Supp. 2d 1374, 1378 (N.D. Ga. 2000); *but see Jimmy Smith Racing Tires v. Ashleman*, C.A. No. 1:05-CV-0970-JEC, 2006 U.S. Dist. LEXIS 66964 (N.D. Ga. Sept. 19, 2006). However, the Georgia Supreme Court, in *Innovative Clinical*, referred to this as an “erroneous interpretation” of the Long Arm Statute and held that “a non-resident ‘must do certain acts’ as delineated by the statute” before it could be subject to personal jurisdiction in Georgia 279 Ga. at 674 & n. 2. Thus, the Court must first consider whether the exercise of jurisdiction over CI satisfies the Long Arm Statute.

The Long Arm Statute provides in relevant part that:

A Court of this state may exercise personal jurisdiction over any non-resident ... as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he were a resident of the state, if in person or through an agent, he:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tortfeasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or service rendered in this state;

O.C.G.A. § 9-10-91. Personal jurisdiction does not exist over CI under any of these subsections of the Long Arm Statute.

Inovis's claims are predicated solely on CI's alleged tortious interference with business relations and violations of the Lanham Act based upon letters sent and received outside the state of Georgia. *See* Complaint ¶¶ 21-38. Those claims do not arise from the transaction of business in Georgia, the commission of a tortious act in Georgia, or the commission of a tortious injury in Georgia. Furthermore, even if the complaint could be interpreted to allege tortious injury in Georgia, CI does not engage in the type of persistent activity in Georgia to support the exercise of jurisdiction under subsection (3). The complaint should be

dismissed because Inovis cannot establish a basis for exercising jurisdiction under the Long Arm Statute.

1. **Subsection (1) is inapplicable because Inovis's claims do not arise from the transaction of business in Georgia.**

Subsection (1) of the Long Arm Statute applies to parties who transact business in Georgia. The Georgia Supreme Court in *Innovative Consulting* recently clarified that this section applies to any claims, whether in contract or tort. 279 Ga. at 675. However, the plaintiff must still establish that its cause of action arises from the nonresident's activities in Georgia. *Aero Toy Store LLC v. Grieves*, 279 Ga. App. 515, 521, 631 S.E.2d 734 (2006). Thus, to exercise jurisdiction under subsection (1), Inovis must establish that its causes of action arise from CI's transaction of business within the State. Inovis has alleged no facts from which the Court can conclude that its claims arise from business transacted by CI in Georgia. Therefore, subsection (1) of the Long Arm Statute provides no basis for exercising jurisdiction over CI.

2. **Subsection (2) Is Inapplicable Because CI Did Not Commit A Tortious Act Within The State Of Georgia**

Subsection (2) of the Long Arm Statute applies only if a non-resident defendant has committed a tortious act within the state. O.C.G.A. § 9-10-91(2). This provision requires the physical presence of the defendant in Georgia at the

time of the tortious act. *White v. Roberts*, 216 Ga. App. 273, 275, 454 S.E.2d 584 (1995). In *White*, the plaintiff alleged that a doctor in Nebraska conspired to fraudulently induce her to purchase a lame horse by sending letters to her in Georgia assuring her that the horse was in good condition and that radiographs of the horse's feet revealed no significant findings. 216 Ga. App. At 273. The court held that subsection (2) was not applicable because the doctor was not in Georgia when the alleged fraud was committed. 216 Ga. App. 275.

Similarly, in *Worthy v. Eller*, 265 Ga. App. 487, 488, 594 S.E.2d 699 (2004), the court considered whether the trial court could exercise personal jurisdiction for purposes of an intentional infliction of emotional distress claim based upon telephone calls and a facsimile transmission made to Georgia from Alabama. The Court of Appeals held that the exercise of jurisdiction for purposes of this claim was governed by subsection (3), which provides for the exercise of jurisdiction if a defendant causes tortious injury within the state. *See also Howell v. Komori America Corp.*, 816 F.Supp. 1547, 1550 (N.D.Ga. 1993) (no jurisdiction over manufacturer for injuries sustained from allegedly defective press because any tortious act occurred in Japan where the press was designed and manufactured).

In this case, Inovis's claims are based on allegations that CI sent letters to three Inovis customers, but there is no allegation that CI was in Georgia at the time

it sent the letters. Since there is no allegation of a tortious act in Georgia, CI cannot be subjected to personal jurisdiction under subsection (2).

3. **CI Is Not Subject To Jurisdiction Under Subsection (3) Of The Long Arm Statute**

Subsection (3) of the Long Arm Statute applies only if the defendant commits a tortious injury in Georgia *and* the defendant regularly solicits business or engages in a persistent course of conduct in Georgia. Inovis's claims are based upon "threats" in letters sent by CI to Inovis's customers, but Inovis does not allege that any of the customers were in Georgia when they received the letters. Thus, there is no injury in Georgia. *Compare Anderson v. Deas*, 279 Ga. App. 892, 632 S.E.2d 682 (2006) (injury from harassing phone calls made into Georgia occurs in Georgia). In the absence of an injury in the State of Georgia caused by CI's out-of-state activities, CI is not subject to jurisdiction under subsection (3) of the Long Arm Statute. *Howell*, 816 F.Supp. at 1550 (holding that the Long Arm Statute does not provide jurisdiction in Georgia where the injury occurred in Tennessee).

Even if Inovis could show injury in Georgia, it must also show that CI "regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or service rendered in this state." *Anderson*, 279 Ga. App. at 893. The complaint is devoid

of any allegations that would support the exercise of jurisdiction under this standard. To the contrary, the evidence submitted by CI establishes that CI does not regularly solicit business or derive substantial revenue from goods or services used in Georgia.

Inovis has failed to allege facts sufficient to satisfy any subsection of the Georgia Long Arm Statute. Accordingly, this Court does not have personal jurisdiction over CI for purposes of Inovis's claims.

B. CI'S CONTACTS WITH GEORGIA DO NOT MEET CONSTITUTIONAL DUE PROCESS REQUIREMENTS AND THEREFORE THIS COURT CANNOT CONSTITUTIONALLY EXERCISE PERSONAL JURISDICTION OVER CI.

The Long Arm Statute does not provide a basis for jurisdiction over CI and therefore, the due process analysis need not even be addressed. *See Howell*, 816 F.Supp. at 1552 (stating that “*after* the [p]laintiff has established that one of the Long Arm statute’s five subsections applies, a Court should look to the full scope of federal due process to determine if personal jurisdiction is proper”) (emphasis in original). Nonetheless, a due process analysis demonstrates that the exercise of personal jurisdiction over CI by this Court would be unconstitutional.

Due process contemplates two types of personal jurisdiction: specific and general jurisdiction. *Railcar, Ltd. v. Southern Illinois Railcar Co.*, 42 F.Supp. 2d

1369, 1371 (N.D.Ga. 1999) (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1985)). CI is not subject to personal jurisdiction in this case under either analysis.

1. **The Court Lacks Specific Jurisdiction Over CI.**

Specific jurisdiction arises when a foreign defendant's purposeful contacts with the forum state give rise to the claim. *Helicopteros*, 466 U.S. at 415. Due process requires that the non-resident defendant "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Washington*, 326 U.S. 310, 316 (1945).

In order to fulfill the minimum contacts requirement for specific jurisdiction, plaintiff must establish the existence of three factors: (1) plaintiff's cause of action must arise out of or relate to the non-resident defendant's contacts with the forum state; (2) the contacts with the state must show that the defendant purposefully availed itself of the privilege of conducting activities within the state, thereby invoking the benefits and protections of its laws; and (3) the defendant's contacts with the forum must be such that the defendant should reasonably anticipate being haled into court there.

Datacom Warranty Corp. v. The Phone Connection of Kansas, Inc., C.A. No. 1:06-CV-01835-MHS, 2006 U.S. Dist. LEXIS 76622 (N.D. Ga. Oct. 20, 2006) (internal quotation omitted). Once it is established that a non-resident has minimum contacts, the plaintiff must also establish that the exercise of jurisdiction "would

comport with fair play and substantial justice.” *Id.* (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 476 (1985)).

The claims in this case arise out of contacts by CI with customers of Inovis outside the State of Georgia. Putnam Mot. to Dismiss Decl. ¶ 13. Since Inovis’s claims do not arise out of any contact by CI with the State of Georgia, the threshold requirement for specific jurisdiction is not met.

The nature of the “threatening” letters at issue here also make it clear that the exercise of jurisdiction over CI in Georgia would not comport with principles of fair play and substantial justice. The Federal Circuit has held that cease and desist letters, alleging patent infringement and sent into the forum state, are not sufficient to support the exercise of personal jurisdiction over the sender. *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.* 148 F.3d 1355 (Fed. Cir. 1998).

The court explained:

Principles of fair play and substantial justice afford a patentee sufficient latitude to inform others of its patent rights without subjecting itself to jurisdiction in a foreign forum. A patentee should not subject itself to personal jurisdiction in a forum solely by informing a party who happens to be located there of suspected infringement. Grounding personal jurisdiction on such contacts alone would not comport with principles of fairness.

Similarly, in *Silent Drive, Inc. v. Strong Indus., Inc.*, 326 F.3d 1194, 1202 (Fed. Cir. 2003), the court held that cease and desist letters sent to the plaintiff and to the

plaintiff's customers within the forum state were not sufficient to confer jurisdiction personal jurisdiction over the defendant.

Here, the cease and desist letters at issue were not sent to the plaintiff and were not sent into the forum state. Under the principle announced in *Red Wing Shoe* and *Silent Drive*, those letters cannot be the basis for the exercise of jurisdiction over CI in Georgia.

2. **This Court Does Not Have General Jurisdiction Over CI Because CI Does Not Have Substantial Contacts with Georgia.**

General jurisdiction permits a court to exercise personal jurisdiction over a non-resident based on contacts with the forum that are not related to the claims at issue. *Railcar*, 42 F.Supp. at 1377. General jurisdiction arises only from "continuous and systematic" contacts between the nonresident defendant and the forum state. *Id.* (citing *Helicopteros*, 466 U.S. at 411). The Eleventh Circuit has held that a "nonresident corporation's contacts with the forum that are unrelated to the litigation must be substantial" to warrant the exercise of general jurisdiction. *Consolidated Dev. Corp. v. Shertritt, Inc.*, 216 F.3d 1286, 1292 (11th Cir.2000).

As a preliminary matter, this Court cannot exercise general jurisdiction over CI because the Georgia Long Arm Statute provides only for the exercise of specific jurisdiction, which means that the cause of action must arise from the defendant's activities within the State. *Pratt & Whitney Canada, Inc. v. Sanders*, 218 Ga. App.

1, 3, 460 S.E.2d 94 (1995); *Aero Toy Store LLC v. Grieves*, 279 Ga. App. 515, 521, 631 S.E.2d 734 (2006). Even if the exercise of general jurisdiction were authorized in Georgia, CI does not have the kind of substantial contacts with Georgia that would authorize the Court to exercise jurisdiction over it based upon contacts unrelated to the causes of action against it.

In *Railcar*, 42 F.Supp. 2d 1369, 1380, the court found that, although the nonresident defendant had some contacts with Georgia, they were not sufficient to establish general jurisdiction. The defendant's contacts with Georgia included having a Georgia customer, transporting goods in its railcars on railroads in Georgia, using Georgia maintenance facilities, and purchasing \$500,000 in labor, materials and services from Georgia vendors during a three year period. *Id.* at 1377-78. The defendant also had employees who traveled to Georgia to meet with Georgia customers and had mail and phone contact with Georgia entities. *Id.* at 1378. The Court held that these contacts were limited and random and refused to assert general jurisdiction over the defendant. *Id.* at 1378-79.

Even more so than the defendant in *Railcar*, CI has nowhere near the substantial level of contacts required to support the exercise of general jurisdiction in Georgia. CI is a Delaware corporation with offices in Texas and California. CI does not own any real estate or have offices or operations in Georgia. CI is not registered to do business in Georgia. Putnam Mot. to Dismiss Decl. ¶¶ 7-8. The

only contacts CI does have with Georgia are random and insignificant. For example, in 2006, CI had only one Customer in Georgia. Putnam Mot. to Dismiss Decl. ¶ 8. CI's total revenues from sales in the State of Georgia were only \$3,000, less than 0.625% of CI's revenue for the year. Putnam Mot. to Dismiss Decl. ¶ 10. CI is not deriving substantial revenues from the state of Georgia or any significant benefits from its limited contacts with the State. These contacts do not rise to the "continuous and systematic" level necessary for the Court to exercise general jurisdiction.

IV. CONCLUSION

CI 's has had no contacts with the State of Georgia that would subject it to jurisdiction under the Georgia Long Arm Statute. Under Georgia law, the analysis ends there. Even to the extent that the Court conducts a due process analysis, CI 's limited contacts with Georgia are unrelated to the claims asserted here and do not support the exercise of personal jurisdiction. CI therefore respectfully requests that it be dismissed from this action.

Respectfully submitted the 21st day of May, 2007.

FRIEND, HUDAK & HARRIS, LLP

Steven W. Hardy

STEVEN W. HARDY

Georgia Bar No. 325910

Three Ravinia Drive

Suite 1450

Atlanta, Georgia 30346-2117

Ph.: (770) 399-9500

Fax: (770)-395-0000

LR 7.1D CERTIFICATION

I hereby certify that the foregoing DEFENDANT CLASSIFIED INFORMATION, INC.'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION was prepared in Times New Roman, 14-point font, in accordance with LR 5.IB.

Steven W. Hardy
STEVEN W. HARDY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc.,

Plaintiff,

V.

Classified Information, Inc.,

Defendant.

Case No. 1:07-CV-0424-CAP

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing *Defendant Classified Information, Inc.'s Supplemental Memorandum of Law in Support of Its Motion to Dismiss for Lack of Personal Jurisdiction*, upon James H. Cox, Esq. and Catherine Salinas, Esq. using the CM/ECF filing system

This 21st day of May, 2007.

FRIEND, HUDAK & HARRIS, LLP

Steven W. Hardy

STEVEN W. HARDY

Georgia Bar No. 325910

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Suite 1450

Atlanta, Georgia 30346-2117

Ph.: (770) 399-9500

Fax: (770)-395-0000

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07-CV-0424-CAP
)	
Classified Information, Inc.,)	
)	
Defendant.)	

DECLARATION OF CHRISTIAN PUTNAM
IN SUPPORT OF MOTION TO DISMISS

1. My name is Christian Putnam. I am over twenty-one years of age and otherwise competent to give sworn testimony in this matter. The statements below are based on personal knowledge.

2. I am the President and sole Director for Classified Information, Inc. ("Classified") the defendant in this action. I have been employed by Classified and in this position for approximately two years.

3. As the President, I am fully apprised of the corporate structure of Classified, as well as the business operations and financial position of Classified.

4. Classified is a small company with a total of three employees, myself, and Matt Lechowicz and Andy Merrill. Mr. Lechowicz and Mr. Merrill staff the inside sales and support office in San Marcos, California.

5. The entirety of the business records of Classified, including sales information, contracts, phone records and correspondence are all located at 3308 Stonebrook Drive, Richardson, Texas 75082. This office is my home office.

6. Classified has not directed advertisements or other promotional material, via print television, or any other media, at Georgia residents or locations.

7. No employees have visited Georgia for any business purpose in the past several years. We have not initiated sales calls to companies located in Georgia since I have been president. Our sales are primarily "inside sales" comprised of customers seeking to renew their maintenance contracts. These software maintenance contracts were purchased from a third party by Classified soon after Classified's incorporation. Since the incorporation of Classified, Classified has not conducted any business transactions within Georgia that resulted in a new customer or attempted to conduct such transactions.

7. Classified is incorporated under the laws of the state of Delaware its principal place of business is located in Richardson, Texas. Classified is not registered to do business in Georgia.
8. Classified does not maintain any offices or operations, manufacturing, production or distribution facilities in Georgia. Classified does not own real estate or assets of any kind in Georgia. Classified does not have employees or independent contractors in Georgia.
9. Classified had one sale of \$3,000.00 to a company located in Duluth, Georgia. Other than this customer, Classified has no contacts, customers or agents in Georgia. Phones calls to this customer were limited to 1-2 phones calls in 2006-2007. Other than the invoice mailed to this customer on April 27th, 2005 there has not been any correspondence, mail, facsimiles or other documents between Classified and any persons or companies in Georgia.
10. Classified does not derive substantial revenues or benefits from the State of Georgia. In 2006, Classified's revenues from sales to the only Classified customer located in Georgia were \$3,000 only 0.625% of Classified's total revenues of \$479,680 in 2006.

11. Classified has not engaged in activities in Georgia which relate to issues of this lawsuit or otherwise. I certainly never expected to be sued in Georgia court.
12. Classified owns U.S. patent No. 5,812,669 and has recorded all appropriate assignments at the U.S. Patent and Trademark office.
13. The complaint in this action is based upon letters that counsel for Classified sent to three customers of Inovis. None of these letters was sent to an address in Georgia.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of May, 2007 at Richardson, Texas.



Christian Putnam

May 2, 2007

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc. and Inovis USA, Inc.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 1:07-CV-0424-CAP
Classified Information, Inc.,)	
)	
Defendant.)	
)	
)	

Notice of Dismissal of Plaintiffs Inovis, Inc. and Inovis USA, Inc.

Pursuant to Federal Rule of Civil Procedure 41(a)(1), plaintiffs Inovis, Inc. and Inovis USA, Inc. hereby file this voluntary notice of dismissal without prejudice of all claims against defendant Classified Information, Inc. ("Classified"). Classified has not yet served an answer or a motion for summary judgment. Pursuant to Local Rule 41.1, Inovis respectfully requests the clerk to enter an order of dismissal.

Respectfully submitted,

Dated: October 5, 2007

WOODCOCK WASHBURN LLP

/s/ Lance D. Reich

Lance D. Reich, Georgia Bar. No. 599698

Andrea Bates, Georgia Bar. No. 041763

2002 Summit Blvd.

Suite 800

Atlanta, GA 30319-6400

Phone: 404.459.0050

Fax: 404.459.5734

Counsel for Inovis, Inc. and Inovis USA, Inc.

Of Counsel:

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Philadelphia, PA 19104

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Inovis, Inc. and Inovis USA, Inc.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:07-CV-0424-CAP
)	
Classified Information, Inc.,)	
)	
Defendant.)	

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October, 2007, served the foregoing Notice of Dismissal using the CM/ECF filing system on the counsel of record:

Steven W. Hardy
Friend Hudak & Harris, LLP
Three Ravinia Drive, Suite 1450
Atlanta, GA 30346-2117
Phone: 770-399-9500
Fax: 770-395-0000

Dated: October 5, 2007

/s/ Lance D. Reich
Lance D. Reich (GA Bar. No. 599698)
WOODCOCK WASHBURN LLP
2002 Summit Blvd., Suite 800
Atlanta, GA 30319-6400
Phone: 404.459.0050
Fax: 404.459.5734
Counsel for Inovis, Inc. and Inovis USA, Inc.

EXHIBIT 5

From: Christian Putnam <christianputnam@sbcglobal.net>
To: Bates, Andrea (Woodcock Washburn)
Sent: Thu Jul 12 18:30:23 2007
Subject: patent

Adrea,

I've sold the patent (US 5,812,669) to a third party company that is well known for buying patents. I've assigned 100% of the title and have no influence of the direction they may take to sell or license the patent. Classified, myself or any affiliate is no longer able license the patent.

I don't know what strategic benefit this frivolous lawsuit will have for your client. I can send out letters to Invosis's customers stating I'm no longer pursuing licensing and have no intention to file patent infringement in exchange for dropping the suit.

Please let me know what you would like to do.

Yours truly,

Christian Putnam

EXHIBIT 6

From: Steve Hardy [<mailto:shardy@fh2.com>]
Sent: Thursday, July 19, 2007 9:19 AM
To: Bates, Andrea (Woodcock Washburn)
Subject: Recent Assignment

Steven W. Hardy, Esq.
Friend, Hudak & Harris, LLP
Three Ravinia Drive, Suite 1450
Atlanta, Georgia 30346
(ph.) 770-399-9500, ext. 120
(fax) 770-395-0000
shardy@fh2.com

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-----Original Message-----

From: scanner@fh2.com [<mailto:scanner@fh2.com>]
Sent: Thursday, July 19, 2007 9:30 AM
To: Steve Hardy
Subject: Scanned image from Friend, Hudak & Harris

DEVICE NAME: Friend, Hudak & Harris
DEVICE MODEL: SHARP AR-M455N
LOCATION: Atlanta

FILE FORMAT: PDF MMR(G4)
RESOLUTION: 300dpi x 300dpi

Attached file is scanned image in PDF format.
This file can be read by Adobe Acrobat Reader.
The reader can be downloaded from the following URL:

<http://www.adobe.com/>

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For good and valuable consideration, the receipt of which is hereby acknowledged, Classified Information, Inc., a Delaware corporation, with an office at 3308 Stonebrook Drive, Richardson, TX 75082, ("*Assignor*"), does hereby sell, assign, transfer, and convey unto Distance Digital Co., L.L.C., a Delaware limited liability company, with an address at 2711 Centerville Rd, Ste 400, Wilmington, DE 19808 ("*Assignee*"), or its designees, all right, title, and interest that exist today and may exist in the future in and to any and all of the following (collectively, the "*Patent Rights*"):

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(b) all patents and patent applications (i) to which any of the Patents directly or indirectly claims priority, (ii) for which any of the Patents directly or indirectly forms a basis for priority, and/or (iii) that were co-owned applications that directly or indirectly incorporate by reference the Patents;

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(d) all foreign patents, patent applications, and counterparts relating to any item in any of the foregoing categories (a) through (c), including, without limitation, certificates of invention, utility models, industrial design protection, design patent protection, and other governmental grants or issuances;

(e) all items in any of the foregoing in categories (b) through (d), whether or not expressly listed as Patents below and whether or not claims in any of the foregoing have been rejected, withdrawn, cancelled, or the like;

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(h) all causes of action (whether known or unknown or whether currently pending, filed, or otherwise) and other enforcement rights under, or on account of, any of the Patents and/or any item in any of the foregoing categories (b) through (g), including, without limitation, all causes of action and other enforcement rights for

(i) damages,

(ii) injunctive relief, and

(iii) any other remedies of any kind

for past, current, and future infringement; and

(i) all rights to collect royalties and other payments under or on account of any of the Patents and/or any item in any of the foregoing categories (b) through (h).

<u>Patent or Application No.</u>	<u>Country</u>	<u>Filing Date</u>	<u>Title of Patent and First Named Inventor</u>
5,812,669	US	7/19/1995	Method and system for providing secure EDI over an open network Lew Jenkins

Assignor represents, warrants and covenants that:

(1) Assignor has the full power and authority, and has obtained all third party consents, approvals and/or other authorizations required to enter into this Agreement and to carry out its obligations hereunder, including the assignment of the Patent Rights to Assignee; and

(2) Assignor owns, and by this document assigns to Assignee, all right, title, and interest to the Patent Rights, including, without limitation, all right, title, and interest to sue for infringement of the Patent Rights. Assignor has obtained and properly recorded previously executed assignments for the Patent Rights as necessary to fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction. The Patent Rights are free and clear of all liens, claims, mortgages, security interests or other encumbrances, and restrictions. There are no actions, suits, investigations, claims or proceedings threatened, pending or in progress relating in any way to the Patent Rights. There are no existing contracts, agreements, options, commitments, proposals, bids, offers, or rights with, to, or in any person to acquire any of the Patent Rights.

Assignor hereby authorizes the respective patent office or governmental agency in each jurisdiction to issue any and all patents, certificates of invention, utility models or other governmental grants or issuances that may be granted upon any of the Patent Rights in the name of Assignee, as the assignee to the entire interest therein.

Assignor will, at the reasonable request of Assignee and without demanding any further consideration therefore, do all things necessary, proper, or advisable, including without limitation, the execution, acknowledgment, and recordation of specific assignments, oaths, declarations, and other documents on a country-by-country basis, to assist Assignee in obtaining, perfecting, sustaining, and/or enforcing the Patent Rights. Such assistance will include providing, and obtaining from the respective inventors, prompt production of pertinent facts and documents, giving of testimony, execution of petitions, oaths, powers of attorney, specifications, declarations or other papers, and other assistance reasonably necessary for filing patent applications, complying with any duty of disclosure, and conducting prosecution, reexamination, reissue, interference or other priority proceedings, opposition proceedings, cancellation proceedings, public use proceedings, infringement or other court actions and the like with respect to the Patent Rights.

The terms and conditions of this Assignment of Patent Rights will inure to the benefit of Assignee, its successors, assigns, and other legal representatives and will be binding upon Assignor, its successors, assigns, and other legal representatives.

IN WITNESS WHEREOF this Assignment of Patent Rights is executed at 5:00 pm on

July 12, 2007.

ASSIGNOR:

CHRISTIAN PUTNAM

By: Christian Putnam
Name: Christian Putnam

(Signature MUST be notarized)

STATE OF Texas)
COUNTY OF Dallas) ss.

On July 12, before me, Philip Harrison, Notary Public
in and for said State, personally appeared Christian Putnam, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the
within instrument and acknowledged to me that he/she executed the same in his/her authorized
capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which
the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Philip Harrison (Seal)

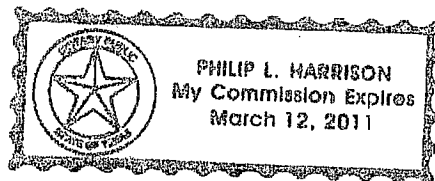


EXHIBIT 7



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Entity Details

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File Number:	4334402	Incorporation Date / Formation Date:	04/13/2007 (mm/dd/yyyy)
Entity Name:	DISTANCE DIGITAL CO., L.L.C.		
Entity Kind:	LIMITED LIABILITY COMPANY (LLC)	Entity Type:	GENERAL
Residency:	DOMESTIC	State:	DE

REGISTERED AGENT INFORMATION

Name:	CORPORATION SERVICE COMPANY		
Address:	2711 CENTERVILLE ROAD SUITE 400		
City:	WILMINGTON	County:	NEW CASTLE
State:	DE	Postal Code:	19808
Phone:	(302)636-5401		

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